GOLD-WEST INDUSTRIES, INC.

IBLA 85-14 Decided February 27, 1986

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring placer mining claims null and void ab initio. A MC 226881, et al.

Affirmed.

1. Mining Claims: Lands Subject to -- Patents of Public Lands: Reservations -- Railroad Grant Lands

BLM properly declares a mining claim null and void ab initio where the land has been reconveyed to the United States with a mineral reservation to the grantor or his predecessor in interest, even though the original conveyance from the United States was pursuant to sec. 3 of the Act of July 27, 1866, 14 Stat. 294 (1866), which expressly excluded mineral lands from the operation of the Act.

APPEARANCES: Clyde C. Stringer, President, Gold-West Industries, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Gold-West Industries, Inc., has appealed from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated August 30, 1984, declaring the Gold-West Nos. 100 through 133 placer mining claims, A MC 226881 through A MC 226914, null and void ab initio.

Appellant's mining claims were located June 11, 1984, in sec. 11, T. 19 N., R. 21 W., Gila and Salt River Meridian, Mohave County, Arizona, and recorded with BLM on August 29, 1984. In its August 1984 decision, BLM declared the claims null and void ab initio because the United States does not own the minerals in the land. BLM stated that the land had been reconveyed to the United States subject to a reservation of minerals.

The record indicates that the land involved herein was originally conveyed to the Santa Fe Pacific Railroad Company (Santa Fe) by patent 946674, dated October 22, 1924, pursuant to the Act of July 27, 1866, 14 Stat. 292 (1866). By warranty deed dated April 16, 1947, Alfred Hewitt and Elizabeth B. Wagner conveyed the land back to the United States as part of an exchange under section 8 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315(g) (1970) (repealed by section 705(a) of the Federal Land Policy and Management

Act of 1976, P.L. 94-579, 90 Stat. 2792 (1976)). The deed stated that it was "[s]ubject to the conditions, limitations, reservations and restrictions appearing in the patents or deeds of the United States of America, the Atchison, Topeka and Santa Fe Railway Company or the Santa Fe Pacific Railroad Company, together with any existing easements." The deed did not specifically mention a mineral reservation to the grantors. However, the record contains a serial register page with respect to the exchange which bears an entry dated March 21, 1950: "Director accepts title to base, says patent to issue, all minerals in offered lands reserved by Santa Fe Pacific R.R. and all minerals in selected lands reserved by United States."

In its statement of reasons for appeal, appellant contends that the United States owns the minerals in the land involved herein because they were never conveyed to Santa Fe. Appellant notes that section 3 of the Act of July 27, 1866, 14 Stat. 294 (1866), provided for the conveyance of "every alternate section of public land, not mineral, * * * on each side of said railroad line," and specifically excluded "all mineral lands" from the operation of the Act. The Act also exempted iron and coal from the definition of the term "mineral."

[1] It is well established that BLM properly declares mining claims null and void ab initio where the claims are located at a time when the United States does not own the minerals because the land has been patented without a mineral reservation to the United States or the land has been reconveyed to the United States but the grantor retained the mineral rights. David C. Brookens, 85 IBLA 1 (1985); All Glory to God Church, 33 IBLA 61 (1977).

Appellant, however, argues that the United States, in essence, retained the mineral rights in the original conveyance to Santa Fe under the Act of July 27, 1866, because conveyance of "mineral lands" is barred under the Act. In this sense, the Act is similar to the Act of March 20, 1922, as amended, 16 U.S.C. § 485 (1982), which authorizes the conveyance of land which is "nonmineral in character." In Brookens, we affirmed a BLM decision declaring lode mining claims null and void ab initio where they were located on land conveyed under the Act of March 20, 1922. We concluded that the land had been determined to be "nonmineral" land at the time of conveyance and this "must be distinguished from a patent of land subject to a mineral reservation." David C. Brookens, supra at 3 (citing United States v. Union Pacific Railroad Co., 353 U.S. 112 (1957)). Thus, we held that:

> In the absence of fraud, the fact that, subsequent to the issuance of the patent, minerals are identified or discovered on "nonmineral" land does not operate to void the conveyance or create a mineral reservation for the United States. See Burke v. Southern Pacific R.R., 234 U.S. 669 (1914); Barden v. Northern Pacific R.R., 154 U.S. 288 (1894); Silver Buckle Mines, Inc., 84 IBLA 306 (1985); Leo Crowley, 84 IBLA 7 (1984); Moise & Leon Berger, 82 IBLA 253 (1984).

David C. Brookens, supra at 3-4. In effect, we held that the mineral rights passed with the conveyance from the United States. Similarly, in the present case, the conveyance from the United States under the Act of July 27, 1866, constitutes a conclusive determination by the United States that the land was

not "mineral land" at the time of conveyance and any subsequent discovery or identification of minerals does not void the conveyance or create a mineral reservation in the United States. See Diane B. Katz, 48 IBLA 118 (1980). Thus, we conclude that where land has been conveyed under the Act of July 22, 1866, the grantee, Santa Fe in this case, acquired the rights to minerals which might later be discovered or identified, despite the original classification as nonmineral land.

Moreover, appellant has provided no evidence that the mineral rights were reconveyed to the United States by the Wagners. On the contrary, the record indicates that the reconveyance from the Wagners was expressly subject in part to "reservations * * * appearing in * * * deeds * * * [of] the Santa Fe Pacific Railroad Company," and that Santa Fe had, indeed, retained "all minerals" in the land. Accordingly, we conclude that BLM properly declared appellant's mining claims null and void ab initio.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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C. Randall Grant, Jr.
Administrative Judge

We concur:

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James L. Burski
Administrative Judge

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Gail M. Frazier
Administrative Judge